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ORDINANCE NO. 50-161

AN ORDINANCE AMENDING SECTIONS 4.16.040, 4.16.070, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.180 AND 4.16.190; CREATING SECTIONS 4.16.050, 4.16.055, 4.16.060, 4.16.065, 4.16.068, 4.16.152, 4.16.153, 4.16.154, 4.16.160, 4.16.165 AND 4.16.175, AND REPEALING SECTIONS 4.16.020, 4.16.030, 4.16.075 AND 4.16.170 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING RESOLUTION R-95-549 PERTAINING TO LICENSING THE SALE OF ALCOHOLIC LIQUOR BY THE DRINK, FEES AND OTHER REQUIREMENTS OF LICENSURE, AND PROHIBITED ACTS BY LICENSEES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS:

SECTION 1. The title to Chapter 4.16 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Chapter 4.16. Drinking Establishments, Private Clubs and Sale of Liquor By the Drink.”

SECTION 2. Section 4.16.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Allowing illegal consumption of alcoholic liquor.

(a) No person shall allow consumption of alcoholic liquor in violation of this chapter on any property owned, leased or otherwise under his such person’s control. Any person allowing such consumption shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed \$500 or by imprisonment not to exceed six months or by both such fine and imprisonment.

(b) The property on which the violation takes place is declared to be a common nuisance and as such is subject to abatement as provided for any other common nuisance by city ordinance or as provided in K.S.A. 41-805 and amendments thereto.”

SECTION 3. Section 4.16.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“License required – sale of liquor by the drink prohibited.

(a) No person shall maintain or operate a drinking establishment, drinking establishment/restaurant, drinking establishment/hotel, class A club, or class B club within the corporate limits of the City of Wichita without having in such person’s possession for the location of the establishment a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(b) No person shall act as a caterer within the corporate limits of the City of Wichita without having in such person’s possession a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(c) No person or organization shall sponsor, conduct or hold an event within the corporate limits of the City of Wichita which requires a temporary permit unless such person or organization has in such person or organization’s possession a temporary permit issued under the provisions of K.S.A. Chapter 41 and this chapter.

(d) Violation of any of the provisions of this section is a misdemeanor and shall be punished as set forth in Section 4.16.190 and amendments thereto.”

SECTION 4. 4.16.055 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Premises licensed; zoning compliance.

(a) Any drinking establishment, drinking establishment/restaurant, drinking establishment/hotel, class A club, or class B club license issued pursuant to this chapter shall be for one particular premises which shall be stated in the application and in the license. Not more than one premises licensed under this chapter shall exist at a single legal address.

(b) No license shall be issued pursuant to this chapter unless a club or drinking establishment of any kind is allowed or provided for at such location by the Wichita/Sedgwick County Unified Zoning Code.”

SECTION 5. Section 4.16.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“License application; fees.

(a) Application for all licenses required by this Chapter shall be upon forms provided by the City Treasurer’s office and shall be filed with the City’s Licensing Section. The applicant shall provide all information requested by such forms and pursuant to the provisions of this title.

(b) At the time application is made to the City Treasurer’s office for a license pursuant to this section, the following fees shall accompany the application:

- (1) Class A private club, any category\$500.00
(fraternal/veterans; social, 500 members or less; social, over 500 members)
- (2) Class B private club\$500.00
- (3) Drinking establishment, any category.....\$500.00
(restaurant, entire hotel)
- (4) Drinking establishment (any category)/caterer.....\$500.00

- (5) Caterer.....\$500.00
- (6) Temporary permit, per day.....\$ 80.00
(maximum 3 consecutive days, 4 times per year, may be for duration of a
Community Event)

Provided, however, this section shall become effective only upon the effective date of the ordinance repealing Charter Ordinance No. 105. Prior to that date, the fees that are currently set by the City Council in Resolution R-95-549, dated November 28, 1995, shall remain in effect. Since the fees currently in effect are annual fees, the amounts shall be doubled for all biennial licenses issued upon the effective date of this ordinance.

No fee required by this chapter or any portion thereof shall be pro-rated or refunded for any reason except if, in the determination of the City Treasurer, the application of this section would result in a substantial and unfair burden upon the applicant.”

SECTION 6. Section 4.16.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Term of license.

(a) The license required by Section 4.16.050(a) or (b) shall be issued for a term of two years and shall extend for the time period covered by the state license for the same premises.

(b) All city licenses required by Section 4.16.050(a) or (b) that are in existence upon the effective date of this ordinance shall be subject to the following procedure:

(1) Any city license expiring prior to the expiration date of the state license for the same premises shall be extended for a period not to exceed one year or until the renewal date of the state license, upon payment of a \$250 renewal fee. No application is required to be submitted for this extension. After one extension, the city license will expire on the same date as the state license expires and subsequent renewals shall be subject to the procedures set forth in subsection (2) herein.

(2) Any city license expiring on the same date as the state license for the same premises shall be renewed and the fees required by Section 4.16.060 paid no later than 10 business days after any renewal of the state license and shall remain in effect during this time period. The licensee shall be responsible for submitting an application for renewal of the city license at least 30 days in advance of the renewal date to allow time for the renewal process.

(c) Any establishment or business that comes into existence after the effective date of this ordinance that is required to be licensed by the city as set forth in Section 4.16.050 (a) or (b) must obtain such license and pay the fee required in Section 4.16.060 before the establishment opens for business under the original state license. Any subsequent renewal of such license shall be subject to the procedures set for in subsection (b)(2) herein.

(d) Any extension of the effective term of the state license issued for an establishment or business shall extend the term of the city license that is issued pursuant to this chapter for the same premises. The city license shall extend for the same period of time as the state license extension, provided, however, the licensee shall be responsible

for providing proof of any extension of the license by the state to the City Treasurer's office."

SECTION 7. Section 4.16.068 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Denial of License – Appeal. The denial of any license or permit application issued pursuant to this chapter shall be subject to the appeal process and provisions set forth in Section 4.16.095(d) and (e), except that the notice of appeal shall include the name and address of the appellant, the date of the license or permit application, the date of the denial of the application or permit and the factual basis for the appeal. The review conducted by the City Council shall be of the facts and circumstances of the license or permit denial."

SECTION 8. Section 4.16.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License exclusive to premises issued.

(a) The license provided in this chapter shall be issued for one particular premises which shall be stated in the application and in the license. No license shall be issued for premises wherein the use thereof would be in violation of any provision of the Wichita-Sedgwick County Uniform Building and Trade Code, the Wichita-Sedgwick County Unified Zoning Code or the fire code of the City of Wichita. Nothing in this section shall be construed to require a fixed premise for persons licensed as a caterer pursuant to article 26 of Chapter 41 of Kansas Statutes Annotated.

(b) Any licensed premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.

(c) Except as provided in subsection (e), any licensed premises which includes the exterior of a building must be enclosed by a fence or approved diverters in such a way as to allow access only through a single structure designated as the official gate or entrance.

(d) Any licensed premises which is an outdoor area must have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrances.

(e) Any licensed premises of a special event, for which a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(f) The licensed premises of drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.”

SECTION 9. Section 4.16.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful acts of licensee or permit holder. It is unlawful for any licensee or holder of a temporary permit under this chapter to:

(a) Employ any person under the age of 21 years in connection with the mixing or dispensing of alcoholic liquor;

(b) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in the court of this city, or of this state or any other state, or of the United States;

(c) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors, or a similar law of the City of Wichita, any other municipality, any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of the City of Wichita, any other municipality, any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years;

(d) In the case of a club, fail to maintain at the licensed premises a current list of all club members and their residences addresses or refuse to allow the City Attorney, the City Attorney's designee or any law enforcement officer to inspect such list;

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder;

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years of age to work on the premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over;

(g) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.”

SECTION 10. Section 4.16.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Revocation of license.

(a) The City Council shall immediately revoke the license of any licensee whenever the state license of the licensee is revoked by the state for any reason.

(b) The City Council, upon five days written notice to a person holding a license to sell alcoholic liquor, may assess an administrative penalty not to exceed \$1,000, may assess such penalty and/or suspension for a period not to exceed 30 days or may revoke such license for any of the following reasons:

(1) If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) If the licensee, manager, employee or agent has violated any of the provisions of this Title, Chapter 3.30 of the Code of the City of Wichita, any rule or regulation by the City Council, or the licensed premises are in violation of the health, housing or fire codes of the City of Wichita or any provision of the Wichita-Sedgwick County Uniform Building and Trade Code, or any provision of the Wichita-Sedgwick County Unified Zoning Code, or any law of the State of Kansas, or of the maximum occupant load of such building;

(3) If the licensee has become ineligible to obtain a license or permit under this title;

(4) The licensee's manager or employee has been intoxicated while on duty;

(5) If the licensee or his manager or employee has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee;

(6) If there has been a violation of a provision of the laws of this city or of this state or of any other state or the United States pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge on premises where alcoholic liquor is sold by such licensee;

(7) If the licensee or his managing officers or any employee, has purchased or displayed, on premises where alcoholic liquor is sold by such licensee, a federal waging occupational stamp issued by the United States Treasury Department;

(8) If the licensee or his managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin-operated gambling device stamp for the premises issued by the United States Treasury Department;

(9) If the licensee holds a license as a Class B Club, drinking establishment or caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;

(10) For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor;

(11) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(12) There has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) prior to their repeal, or K.S.A. 2012 Supp. 21-6204 (maintaining, permitting a public nuisance) and amendments thereto, in or upon the licensee's place of business.

(c) In any hearing before the City Council pursuant to this section, a certified copy of conviction from any local, state, or federal court, for any violation contained within subsection (b) of this section, is prima facia evidence of violation. For the purposes of this section, 'conviction' shall include being adjudged guilty upon entering a plea of no contest.

(d) Within 20 days after the order of the City Council revoking or suspending any license, the licensee may appeal from such order to the Sedgwick County District Court in the manner as provided by law; provided that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on his behalf, for a period of six months after the revocation becomes effective.”

SECTION 11. Section 4.16.095 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Suspension or reclassification of license by Chief of Police.

(a) The Chief of Police, upon five days written notice to the person holding a license issued pursuant to this Chapter, shall have the authority to suspend such license for a period of not to exceed 30 days for any of the reasons set forth at Section 4.16.090(b) (2), (4), (5), (6), (9), (10), (11) and (12), which reason does not, in the judgment of the chief of police, justify a recommendation of revocation.

(b) The Chief of Police, upon five days written notice to the person holding any license issued pursuant to this Chapter, shall have the authority to suspend such license if the licensee, the licensee's manager, employee, or agent, or any person under the direction and control of the licensee has committed a violation of Sections 7.41.010 or 7.41.030 (noise) of this Code, or any amendments thereto. Within any two-year period of time, upon a first violation of said sections, the Chief of Police shall issue a written warning to the licensee; upon a second violation, shall suspend such license for a period of one day; upon a third violation, shall suspend such license for a period of one week; and upon a fourth or subsequent violation, shall suspend such license for the period of one year.

(c) The Chief of Police upon five days written notice to the person holding a drinking establishment/restaurant license shall reclassify the premises to a drinking establishment if the licensee fails to provide information showing the required amount of gross revenues from sales of food and the service of food for consumption on the licensed premises, or has been convicted of three violations of Section 4.16.130 of this Code. In the event of such reclassification by the Chief of Police, the licensee shall be ineligible to apply for, hold or have any interest in any business licensed as a drinking

establishment/restaurant for a period of one year from the date of the reclassification, and shall have 30 days within which to apply for the appropriate zoning which may be required as a result of the change in classification and shall be permitted a reasonable time thereafter within which to complete the process. For the purpose of determining whether a conviction is a third or subsequent conviction under this section, all convictions for violation of Section 4.16.130 occurring within the immediately preceding twenty-four months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.

(d) The licensee may appeal any order of suspension or reclassification issued pursuant to this section by filing with the City Clerk a written notice of appeal to the City Council within 20 days of the decision to suspend a license by the Chief of Police.

Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of the suspension or reclassification of the license; and
- (3) the factual basis for the appeal.

Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than 30 days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or reclassification of the license until the matter is heard by the City Council. The City Council may approve or overrule the suspension or reclassification of a license or may modify the decision to suspend or reclassify a license, and in addition, may impose an administrative penalty of up to \$1,000. In any hearing before the City Council pursuant

to this section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation.

(e) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the suspension or reclassification of the license or any modification imposed thereupon by the City Council.

(f) The ~~chief of police~~ Chief of Police shall notify the ~~city manager~~ City Manager prior to making a suspension or reclassification hereunder.

(g) As used in this Section, any authority granted to the Chief of Police shall include his or her designee.”

SECTION 12. Section 4.16.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Permitting consumption by minors; minors prohibited from entering or remaining in drinking establishments; exceptions; penalties.

(a) No licensee, permit holder, or any owner, officer, or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverages by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

(b) No licensee, owner, officer, or employee of a drinking establishment shall knowingly or unknowingly allow a minor to enter or remain on the premises of a

drinking establishment and no minor shall enter or remain on the premises of a drinking establishment.

(c) It shall be a defense to a prosecution of a licensee, permit holder, or any owner, officer, or employee thereof, under subsection (a) or (b) if:

(1) The defendant allowed the possession or consumption of the alcoholic liquor or cereal malt beverage by the minor or allowed the minor to enter or remain upon the premises of a drinking establishment with reasonable cause to believe that the minor was 21 or more years of age; and

(2) To possess or consume the alcoholic liquor or cereal malt beverage, or to enter or remain upon the premises of a drinking establishment, the minor exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

(d) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$500 or imprisonment not exceeding 30 days, or by both such fine and imprisonment.

(e) Violation of this section by a person 18 or more years of age but less than 21 years of age is a misdemeanor punishable by a fine of not less than \$200 and not more than \$500. In addition to such fine the court may order the offender to perform 40 hours of public service. Further, any person less than 18 years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication

thereof shall be required as a condition of disposition to pay the fine or perform the public service, or both, as set forth in herein.

(f) The provisions of subsection (b) of this section apply only to drinking establishments, as defined in Section 4.04.010 and amendments thereto and not to any other license issued under this chapter.”

SECTION 13. Section 4.16.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Class A club license; rights of licensee.** A license for a class A club shall allow the licensee to:

(a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families and guests accompanying them and to any reciprocal member as provided by K.S.A. 41-2637, and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge for consumption by members and their families and guests accompanying them and to any reciprocal member as provided by K.S.A. 41-2637 and any amendments thereto. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2637 and amendments thereto.”

SECTION 14. Section 4.16.152 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Class B club license; rights of licensee. A license for a class B club shall allow the licensee to:

(a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club, family members and guests accompanying members, and to any reciprocal member as provided by K.S.A. 41-2641 and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge on the licensed premises for consumption by such members and their families and guests accompanying them. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2641 and amendments thereto.”

SECTION 15. Section 4.16.153 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Caterers.

(a) A caterer’s license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises which may be open to the public.

(b) Every licensee shall cause the caterer’s license to be placed in plain view on any premises within the City where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(c) Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide electronic notification to the Director at least 48 hours prior to any event at which the caterer will sell alcoholic liquor by the individual drink. The Director shall make electronic notification available to local law enforcement. Notice shall consist of the time, location and the names of the contracting parties of the event. For events where alcohol is served, a licensee shall retain all documents for a period of three years for inspection by the director. The documents retained shall include agreements, receipts, employees assigned to the event and records of alcohol purchased. Notification shall not be required for weddings, funerals, events sponsored by religious institutions, or for business, industry or trade sponsored meetings, including, but not limited to, awards presentations and retirement celebrations.

(d) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2643 and amendments thereto.”

SECTION 16. Section 4.16.154 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Temporary permits.

(a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of the permit.

(b) A temporary permit shall specify the premises for which such permit is issued and shall be issued only for premises as allowed by the Wichita-Sedgwick County Unified Zoning Code.

(c) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which will be specified in the permit. Not more than four temporary permits may be issued to any one applicant in a calendar year. Provided, however, that, pursuant to K.S.A. 41-2645 and amendments thereto, the director may issue a temporary permit for a special event which, in the director’s discretion, may last no more than 30 days in duration.

(d) A holder of a temporary permit is further authorized to engage in activities as set forth in K.S.A. 41-2645 and amendments thereto.”

SECTION 17. Section 4.16.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“No drinks promotion, allowing removal of alcoholic liquor from certain licensed premises, certain sales practices prohibited.

(a) No club, drinking establishment, drinking establishment/restaurant, drinking establishment/hotel, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof shall:

(1) Offer or serve any free drink of cereal malt beverage or alcoholic liquor in any form to any person;

(2) Offer or serve to any person an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;

(3) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of individual drinks as prizes;

(5) sell, offer to sell or serve free of charge any form of powdered alcohol, as defined in K.S.A. 41-102, and amendments thereto; or

(6) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (5);

(7) Sell, offer to sell or serve any drink of alcoholic liquor or cereal malt beverage for consumption off of the licensed premises;

(8) Recklessly allow or permit any person to remove a drink of alcoholic liquor from the licensed premises or from the caterer's premises, except as allowed in subsection (c).

(b) A club, drinking establishment, drinking establishment/restaurant, drinking establishment/hotel, caterer or holder of a temporary permit may:

(1) Offer free food or entertainment at any time;

(2) Sell or deliver wine by the bottle or carafe;

(3) Sell, offer to sell and serve individual drinks at different prices throughout any day; or

(4) Sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(5) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the director in a pitcher containing not more than 64 fluid ounces.

(6) A club, drinking establishment, drinking establishment/restaurant, or drinking/establishment/ hotel may offer customer self-service of wine from automated devices on licensed premises so long as the licensee monitors and has the ability to control the dispensing of such wine from the automated device.

(c) Notwithstanding the provisions in subsection (a), a class A club license, class B club license, drinking establishment or drinking establishment/restaurant shall allow the licensee to allow legal patrons of the club or drinking establishment to remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:

(1) It must be legal for the licensee to sell the alcoholic liquor in its original container;

(2) The alcoholic liquor must be in its original container;

(3) Each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;

(4) The licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and

(5) Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

(d) A hotel of which the entire premises is licensed as a drinking establishment may distribute coupons to its guests redeemable on the hotel premises for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(e) A hotel of which the entire premises is not licensed as a drinking establishment may distribute coupons to its guests redeemable with one or more clubs or drinking establishments for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(f) Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than \$500 or imprisonment not to exceed six months or by both such fine and imprisonment.

(g) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by this Title.”

SECTION 18. Section 4.16.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Drinking establishments and drinking establishment/restaurants – allowing serving of samples. Any drinking establishment or drinking establishment/restaurant license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, and to serve samples of alcoholic liquor free of charge on licensed premises. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

Alcoholic liquor and cereal malt beverage for the sampling as provided in this section shall be withdrawn from the inventory of the licensee. A person other than the licensee or the licensee’s agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section, except that the holder of a supplier’s permit or such permit holder’s agent or employee may participate in and conduct product tastings of alcoholic beverages upon a licensee’s premises as provided in K.S.A. 41-2656 and amendments thereto.”

SECTION 19. Section 4.16.165 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Dispensing and infusing alcoholic liquor.

(a) Alcoholic liquor shall be dispensed only from original containers, except any drinking establishment licensee or its agent or employee, may dispense:

(1) Alcoholic liquor from a machine or container used to mix alcoholic liquor with other liquids or solids intended for human consumption;

(2) alcoholic liquor from a machine or container used to chill alcoholic liquor, which may contain additional liquids or solids intended for human consumption; or

(3) infused alcoholic liquor from a container used to infuse alcoholic liquor with other substances intended for human consumption.

(b) A drinking establishment licensee, or its agent or employee, shall not refill any original container with any alcoholic liquor or any other substance.

(c) Any drinking establishment licensee, or its agent or employee, may infuse alcoholic liquor with spices, herbs, fruits, vegetables, candy or other substances intended for human consumption if no additional fermentation occurs during the process.

(d) As used in this section:

(1) “Dispense” means to portion out servings of alcoholic liquor for consumption. This term shall include the pouring of drinks of alcoholic liquor and opening original containers of alcoholic liquor by the licensee or licensee’s employee for consumption by customers, and shall not include any self-dispensing by a customer.

(2) “Infuse” means to add flavor or scent to a liquid by steeping additional ingredients in the liquid.”

SECTION 20. Section 4.16.175 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Possession of alcoholic liquor or cereal malt beverage on licensed premises.

(a) Nothing in this title shall be construed to prohibit a person from possessing, on premises licensed pursuant to this Chapter, alcoholic liquor or cereal malt beverage not purchased from the licensee.

(b) Nothing in this section shall prevent a licensee under this Chapter from adopting a policy prohibiting the possession, on the licensee's licensed premises, of alcoholic liquor or cereal malt beverage not purchased from the licensee.”

SECTION 21. Section 4.16.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Persons and entities ineligible for ~~club~~ license.

(a) No license shall be issued under the provisions of this chapter to:

(1) A person who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased licensee may receive and renew a license issued under the provisions of this chapter notwithstanding the provisions of this subsection if such spouse is otherwise qualified to hold a license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

(2) A person who has been convicted of or has pled guilty to a felony under the laws of this state or any other state or of the United States;

(3) A person who has had a license revoked for cause under the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(4) A person who has been convicted of being the keeper or is keeping or has forfeited bond to appear in court to answer charges of being a keeper of any

property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or

(5) A person who has been convicted of or has pled guilty to being a proprietor of a gambling house or of pandering or other crimes or misdemeanors opposed to decency and morality or shall have forfeited ~~his~~ bond to appear in court to answer charges for any such violations;

(6) A person who is not at least 21 years of age;

(7) A person who, other than as a member of the governing body of the City of Wichita or of Sedgwick County, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director, except that the provisions of this subsection shall not apply to prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof;

(8) A person who intends to carry on the business authorized by the license as agent of another;

(9) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application except as provided by subsection (11);

(10) A person who has not been a resident of the State of Kansas for a period of at least one year immediately preceding the date of application;

(11) Any person if the spouse of such person would be ineligible to receive such a license hereunder for any reason other than citizenship, residence

requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license;

(12) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquor or a beneficial interest in any other club, drinking establishment or caterer licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and this title, except that:

(a) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotel;

(b) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants;

(c) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer;

(d) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club;

(e) Any person who has a beneficial interest in a microbrewery, microdistillery or farm winery licensed pursuant to the Kansas Liquor Control Act may be issued any or all of the following: (1) class B club license; (2) any drinking establishment license; and (3) caterer's license;

(13) A copartnership, unless all of the copartners are qualified to obtain a license;

(14) A corporation, if any officer, manager, or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a club license hereunder for any reason other than citizenship and residence requirements;

(15) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than five percent of the common or preferred stock, of a corporation which:

(a) Has had a license revoked under the provisions of the club and drinking establishment act of the State of Kansas,

(b) Has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of the State of Kansas;

(16) A corporation organized under the laws of any state other than the State of Kansas;

(17) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this chapter for any reason, except that the provisions of subsection (6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(18) A person who has failed to pay any outstanding administrative penalty imposed pursuant to Section 4.12.090(c) or Section 4.16.095(d) of the City Code.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person who does not own the premises for which a license is sought, or does not, at the time the application is submitted, have a written lease thereon, except that an applicant seeking a license for a premises which is owned by a city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises may submit an executed agreement to provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located.”

SECTION 22. Section 4.16.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty for violation.

Violation of any provision of this chapter and amendments thereto, for which a penalty is not otherwise specifically provided is punishable by a fine not to exceed \$500 or imprisonment not to exceed six months, or both such fine and imprisonment.”

SECTION 23. The originals of Sections 4.16.020, 4.16.030, 4.16.040, 4.16.070, 4.16.075, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.170, 4.16.180 and 4.16.190 of the Code of the City of Wichita, Kansas, are hereby repealed, and Resolution R-95-549 shall be repealed upon the effective date of the Charter Ordinance repealing Charter Ordinance No. 105 of the Code of the City of Wichita, Kansas.

SECTION 24. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper, except that Section 4.16.060 shall become effective upon the effective date of the Charter Ordinance repealing Charter Ordinance No. 105.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of March, 2016.

Jeff Longwell, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer Magaña, City Attorney and
Director of Law

